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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/833,906	11/15/2000	Yael Melman	EMC-97-028-A(CON)	5997

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EXAMINER
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CARDONE, JASON D

ART UNIT	PAPER NUMBER
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2142

DATE MAILED: 01/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/833,906

Applicant(s)

MELMAN, Yael

Examiner

Jason D Cardone

Art Unit

2142

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 November 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 November 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: *See Attached Office Action.*

### DETAILED ACTION

1. Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 120. An application in which the benefits of an earlier application are desired must contain a specific reference to the prior application(s) in the first sentence of the specification of in an application data sheet (37 CFR 1.78(a)(2) and (a)(5)). The specific reference to any prior nonprovisional application must include the relationship (i.e., continuation) between the applications.

#### *Specification*

2. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

3. Amendment to claim 27 was not entered, since there isn't a claim 27.

#### *Double Patenting*

4. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101, which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

5. Claims 1-26 provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-26 of copending Application No. 09/713350. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hutton et al. ("Hutton"), USPN 6,108,704, in view of Hwang, USPN 5,475,601.

8. Regarding claim 10, Hutton discloses a network having a plurality of computer system calls, the computer system calls available to a user of a first process residing on a first processor to begin and facilitate communication with a second process residing on a second host processor, through a data storage system, wherein the first and second processors are separately coupled to the data storage system, the computer system calls comprising: a first call within the process to obtain a communication mechanism from the data storage system, wherein the first call selects a desired type of communication [Hutton, col. 5, lines 1-24];

a second call within the first process to create a local address for the first process to use with the communication mechanism [Hutton, col. 5, lines 25-37]; and

a third call within the first process to create a connection between the first process and the second process, wherein the third call connects the first process to the second process [Hutton, col. 5, lines 45-67 and col. 7, line 60 – col. 8, line 17]].

Hutton discloses using a protocol between two processes, separately coupled to the data storage system, but does not specifically disclose the first call selects a transfer means. However, Hwang, in the same field of endeavor, discloses a gateway selects a transfer means between two processes, separately coupled to the data storage system (ie. gateway) [Hwang, col. 3, lines 10-48 and col. 4, lines 22-61]. It would have be obvious to one of ordinary skill in the art, at the time of the invention, to incorporate the selecting of transfer means, taught by Hwang, in to the data storage system, taught by Hutton, in order to have multiple ways to transfer information.

9. Regarding claim 11, Hutton-Hwang further discloses the plurality of computer system calls includes calls to use the communication mechanism to transfer information between the first and the second process through the data storage system [Hutton, col. 4, line 26 – col. 5, line 24] [Hwang, col. 3, lines 10-48].

10. Regarding claims 12-15, Hutton-Hwang further discloses a fourth call in which either of the first process is an initiating process and sends information to the second process through the data storage system, a fifth call in which the second receives information from the first processes, and a sixth call to terminate the connection between the first and the second processes, wherein the first and the second processes each reside on a different host processor, and each the

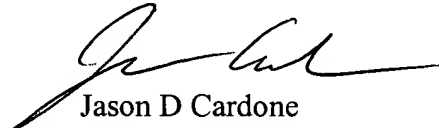
host processor is connected to the data storage system [Hutton, col. 4, line 56 – col. 5, line 67 and col. 7, lines 17-59] [Hwang, col. 3, lines 10-48 and col. 4, lines 22-61].

11. Regarding claims 1-9 and 16-26, claims 1-9 and 16-26 have similar limitations as disclosed in claims 10-15. Therefore, the similar limitations are disclosed under Hutton-Hwang for the same reasons set forth in the rejection of claims 10-15 [Supra 10-15].

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason D Cardone whose telephone number is (703) 305-8484. The examiner can normally be reached on Mon.-Thu. (9AM-6PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Harvey can be reached on (703) 305-9705. The fax phone number for the organization where this application or proceeding is assigned is (703) 746-7239. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

  
Jason D Cardone  
Primary Examiner  
Art Unit 2142

January 12, 2004